

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

Babinski Properties and Donald Babinski,  
Personally and as Executor of the Estate of  
John Babinski,

Plaintiffs,

vs.

Union Insurance Company,

Defendant.

Civil File No. 09-4192

**NOTICE OF REMOVAL**

TO: Mr. Joseph A. Haas, United States District Court Clerk, Rm 128, United States Courthouse, 400 South Phillips Avenue, Sioux Falls, South Dakota, 57104; and

Plaintiffs Babinski Properties and Donald Babinski, Personally and as Executor of the Estate of John Babinski, and their attorneys, Mark V. Meierhenry, Clint Sargent and William E. Blewett, Meierhenry Sargent LLP, 315 South Phillips Avenue, Sioux Falls, South Dakota, 57104.

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, defendant Union Insurance Company hereby gives notice of the removal of this action from the Second Judicial District, Minnehaha County, South Dakota, where it is now pending, to the United States District Court for the District of South Dakota, Southern Division. In support of this Notice of Removal, Union Insurance Company further states:

1. On December 7, 2009, the present civil action was served by plaintiffs. Plaintiff's Complaint pleads a breach of contract and seeks the recovery of indemnity under an Union Insurance Company insurance policy, plus punitive damages, interest and fees. (A true and copy of the plaintiffs' Complaint is attached as Exhibit A to this Notice).
2. Plaintiffs' Complaint does not allege citizenship of the parties.

3. On information and belief, plaintiff Babinski Properties is a/k/a Babinsky, Ltd., and is a corporation organized under the laws of the State of South Dakota, with its principal place of business in Sioux Falls, Minnehaha County, South Dakota.

4. On information and belief, plaintiff Donald Babinsky is the principal of Babinski Properties a/k/a Babinsky, Ltd., and is a citizen of Florida, Minnesota, and South Dakota.

5. Defendant Union Insurance Company is Company is, and at all material times was, a corporation organized under the laws of the State of Iowa, with its principal place of business in Iowa.

6. This court has personal jurisdiction over the Plaintiffs.

7. The above-entitled case is a civil action of which the United States District Court for the District of South Dakota, Southern Division, has original jurisdiction under the provisions of 28 U.S.C. § 1332, and is an action of a civil nature between citizens of different states where the amount in controversy exceeds \$75,000.00, exclusive of costs, fees and interest.

8. Plaintiffs' Complaint alleges that the amount in controversy exceeds \$800,000. Plaintiffs' Complaint alleges that Plaintiffs are entitled to coverage under the Union Insurance Company policy for liabilities arising out of a claim and loss totaling approximately \$800,000. (Ex. A, ¶ 7).

9. Because plaintiffs seek indemnity for the aforementioned claim and loss, totaling approximately \$800,000, in addition to presently unknown punitive damages,

fees and costs, removal is appropriate because the amount in controversy in the present case exceeds \$75,000.

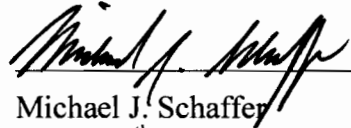
10. This action is removable to the United States District Court for the District of South Dakota, Southern Division, pursuant to 28 U.S.C. § 1441, which provides that any civil action brought in a state court for which the district courts of the United States have original jurisdiction may be removed by the defendant to the district court for the United States for the district and division embracing the place where the action is pending.

12. This Notice of Removal is timely filed within 30 days after defendant Union Insurance Company first received a copy of the initial pleading setting forth the claims for relief upon which this removal is based.

WHEREFORE, defendant Union Insurance Company gives notice and respectfully removes the above-entitled action from the Circuit Court of the Second Judicial District, Minnehaha County, South Dakota, to the United States District Court for the District of South Dakota, Southern Division.

Dated this 28<sup>th</sup> day of December, 2009.

SCHAFFER LAW OFFICE, PROF. LLC



Michael J. Schaffer  
412 W. 9<sup>th</sup> Street, Suite 1  
Sioux Falls SD 57104-3602  
Telephone: (605) 274-6760  
Facsimile: (605) 274-6764  
*Attorneys for Defendant*

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendant, hereby certifies that a true and correct copy of the foregoing "Notice of Removal" was served by mailed upon:

Mark V. Meierhenry  
Clint Sargent  
William E. Blewett  
Meierhenry Sargent LLP  
315 S. Phillips Avenue  
Sioux Falls SD 57104  
*Attorneys for Plaintiffs*

on this 28<sup>th</sup> day of December, 2009.

